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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District
Name (under which you were convicted): <u>Tim Sunday</u>		Docket or Case No.: <u>3:07-cv-123-MEF</u> CC-98-1095
Place of Confinement: <u>EASTERN Lin? Cor. Fac.</u>		Prisoner No.: <u>213453</u>
Petitioner (include the name under which you were convicted) <u>Timothy Lee Sunday</u>		Respondent (authorized person having custody of petitioner) <u>Lee County Cir. Court ALA.</u>
The Attorney General of the State of <u>Texas</u>		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Lee County, STATE OF ALABAMA
- (b) Criminal docket or case number (if you know): CC-98-1095
- (a) Date of the judgment of conviction (if you know): 12-2-1999
- (b) Date of sentencing: Feb 17, 2003
- Length of sentence: LIFE
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case: SEXUAL ABUSE 1
12nd OKLA. CASE NUMBER CRF-1992 OKLAHOMA
SEXUAL BATTERY: 5 Counts, Sent. 1 Year for each Count.
- (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Lee Circuit Court

(b) Docket or case number (if you know): CC-98-1095

(c) Result: Affirmed after Remand

(d) Date of result (if you know): Aug. 30, 2002

(e) Citation to the case (if you know): CR-01-0207

(f) Grounds raised: TRIAL Counsel Jeff Tickal was ineffective for failing to object and preserve for direct appeal review the Assistant District ~~Attorney~~ Bail Meeks knowingly used perjured testimony from Cynthia Thrower in violation of the Sixth and Fourteenth Amendment to the Constitution of the United States (CC 0022) Please see Item #1.

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: Middle District Court, Alabama

(2) Docket or case number (if you know): _____

(3) Result: Dismissed with Prejudice 2008

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: (1) Trial Counsel Jeff Tickal was ineffective for failing to object and preserve for direct review "appeal" the Assistant District Attorney Bail Meeks - knowingly use of perjured testimony from Cynthia Thrower in violation of the Sixth and Fourteenth Amendment to the Constitution of the United States. (CC 0022). [Please see Attachment #1]; (#1 Intro)

- (II): Trial Counsel Jeff was ineffective for failing to adequately cross examine Cynthia Thruwer (C 0095)
- (III): Trial Counsel was ineffective for failing to object to the Prosecutions comments during closing arguments in violation of the Petitioners Sixth and Fourteenth Amendments to the United States Constitution (C 0048)
- (IV): Trial Counsel was ineffective for failing to object to the trial Courts jury instruction on reasonable doubt. (C 0079).
- (V): Ineffective Assistance of Appellate Counsel. Appellant Counsel Robin McIntyre was ineffective for failing to present on direct review the issue of the illegal search and seizure of evidence from the petitioners room. (C 0113):
- (VI): Appellate Counsel McIntyre was ineffective for failing to present on direct review the issue of erroneous jury charge on forcible compulsion requested by the state in their jury charge No. 1 (C 0116):
- (VII): Sentence exceeds that authorized by law.
- (VIII): Trial court abused its discretion:

1: C0022 refers to clerks record CC 981095, Lee County

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☒ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): unknown [Prison officials ravished

(2) Result: Legal materials and Court documents lost
out of time. Petitioner was not provided legal materials to present

(3) Date of result (if you know): on time. "Seizure". This made ARAI out of time

(4) Citation to the case (if you know): unknown - Civ. Act. 05-7-502-B

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: _____

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Petitioner's conviction was obtained as a result of ineffective assistance of counsel at trial.

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): This violated Petitioner's right to effective assistance of counsel as guaranteed by the United States Constitution, and the Fifth and Fourteenth and the Sixth Amendments thereto. Strickland v. Washington 466 U.S. 668 (1984). Trial counsel was ineffective for failure to object and preserve for direct review the Assistant Attorney General's knowing use of perjured testimony violating Sixth and Fourteenth Amendments to the United States Constitution.
- (b) If you did not exhaust your state remedies on Ground One, explain why: I exhausted state remedies but state of Alabama denied equal protection of the laws and adequate and meaningful access to appeal and reviewed by the honest Judges, magistrates and clearly established laws of U.S.

(c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Appeal Rule 32: Habeas Corpus

Name and location of the court where the motion or petition was filed: Lee County Justice Center
2311 Gateway Drive Room 104 Opelika, Alabama 36801

Docket or case number (if you know): CC 98-1095

Date of the court's decision: Sept. 26, 2001

Result (attach a copy of the court's opinion or order, if available): The Rule 32 Court is-
sued an order stating that the Court was of the opinion
that the Court Petition was Precluded and that the States ~~did~~ motion granted

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Ala. Court of Crim. Appeals.
Dec. 4, 2001.

Docket or case number (if you know): CR-01-0207

Date of the court's decision: Nov. 2, 2002

Result (attach a copy of the court's opinion or order, if available): [Not Available]

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Nov. 15, 2002 Crim. Appeals
Case CR-01-0207 CC 98-1095.60, Appeal was Affirmed.
Clerk. Court of Criminal Appeals STATE OF ALABAMA

GROUND TWO: Petitioner of Actual Innocence may bring a Fun-
damental Miscarriage of Justice exception to Cause for Procedural Default

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): [See exhibits
Y-1 through Y-4] (Civ. Act. 03-T-502-E). Ala. Dept. of Forensic Sciences.
A credible claim of Actual Innocence involves the Petitioner's Sup-
porting his Constitutional claims with reliable evidence whether
it be exculpatory scientific evidence, trustworthy, that was not
presented at trial. Please consider the probative force of relevant
evidence that was either excluded (TR. 315, 316, 383-386, 387, 680,
Corrected Page 386 or unavailable at trial. (CR. 680).

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Rule 32, Habeas Corpus Motion, Fed. Rule Civ. P. 60 (b)?

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): CA-06-1884

Date of the court's decision: AUG. 6th 2007

Result (attach a copy of the court's opinion or order, if available): dismissed

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: 11A - Court of Crim. Appeals

Docket or case number (if you know): CC 98-1092-62

Date of the court's decision: AUG. 6th 2007

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: ALA. Court. of Crim. Appeals.
ALA. Supreme Court; Middle District Court.

GROUND THREE: Trial Counsel Mr. Jeff Tickal was Ineffective for failing to adequately cross examine Ms. Cynthia Thawer.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Nov. 30, 1979, After completion of opening statements Cynthia Thawer (Cindy) A Mentally Retarded Victim in this case CC-98-1095 was called to testify (T.R. 354). Prior to testimony before the jury, Thawer was questioned outside the jury presence (R-352-357). And she did testify in front of jury (T.R. 360-387). There was testimony that people had told her what to say about Timony, who to point out (R. 383-86).

(b) If you did not exhaust your state remedies on Ground Three, explain why: I exhausted but the courts refused to follow clearly established law, and violated my Constitutional rights to AAAA. Committed fraud.

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Habeas Corpus

Name and location of the court where the motion or petition was filed: Middle District ALABAMA

Docket or case number (if you know): Div. Act. 03-T-502-E

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): NA

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Mid. Dist. Ala.

Docket or case number (if you know): 03-T-502-E

Date of the court's decision: 2007

Result (attach a copy of the court's opinion or order, if available): NA

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: Exhausted All State Court Remedies

GROUND FOUR: Trial Counsel was ineffective for Failure to object to Prosecutor's comments during closing argument violating 6th, 14th Amend. U.S. Const.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The Prosecution suppressed evidence favorable to Petitioner. (R. 383-386, corrected Page 386 (Rule 39(K) Motion, Case number CR-99-1045 on appeal) from Circuit Court of Lee County, Ala. case # CC-98-1095 filed by T. Robin McIntyre, def. Attorney Oct. 6, 2000. And CR-01-02107. Counsel's errors were so serious as to deprive defendant of a fair trial, whose result is reliable.

(b) If you did not exhaust your state remedies on Ground Four, explain why: Remedies exhausted.

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Habeas Corpus

Name and location of the court where the motion or petition was filed: Mid. District. Ala.

Docket or case number (if you know): 03-T-502-E

Date of the court's decision: 2007

Result (attach a copy of the court's opinion or order, if available): NA

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Mid. Dist. Alabama

Docket or case number (if you know): 03-T-502-E

Date of the court's decision: 2007

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NO

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. Mid. Dist. Court. AIA. Civ. Act. 03-

T-502-E

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Attorney Jeff Tickal "Bullage & Tickal"
2304 Gateway Drive #A Opelika, AL 36801-6820

(b) At arraignment and plea: Jeff Tickal

(c) At trial: Jeff Tickal

(d) At sentencing: Jeff Tickal

(e) On appeal: T. Robin McIntyre 2101 Executive Park drive Opelika, AL
36801

(f) In any post-conviction proceeding: Pro-Se

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro-Se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

The Petitioner seeks relief in the District Court under Rule 60, Fed. R. Civ. P. He shows that his 60(b) motion is one of the very few motions seeking to reopen a habeas denial on any ground that is not barred by § 2244. Petitioner lists several extraordinary situations in which he concedes that a Rule 60(b) motion is not a "second or successive application within § 2244(d). The Facts: Trial Court Appellate Court's, VAN ZETTA Penn McPherson, Magistrate Judge Milton Thompson, The Prosecutors, Attorney General's, Defense Counsel Appellate Counsel has denied a meaningful opportunity to advance constitutional claims at the trial or on appeal. He has not had an adequate opportunity to present his claims fairly in the context of the state appellate process. *Evitts v. Lucey*, 469 U.S. 387, (1985) (quoting *Ross v. Moffitt* where the challenged habeas judgment "precluded one round of Federal review, including a dismissal) for failure to exhaust. *Slack v. McDaniel* 529 U.S. 472 (2000), whether a prior Petitioner's dismissal with prejudice occurred because Prison officials frustrated "Sunday's" effort to respond to motions to dismiss, and certiorari. A later Petition with the same claims is not successive. *Schornhorst v. Anderson* 77 F. Supp. 2d 944, 948-49 (S.D. Ind. 1999); Fraud upon the Court is not successive *Calderon* 523 U.S. at 548, 554, id at 557; The Present case CC-98-1095 and corrected Page 386 line 23 are at the heart.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Petitioner's 60th motion
reasserts claims for habeas relief presented in original
Petition, evidence CC-98-1095, set judgment aside, release to Oklahoma.
or any other relief to which petitioner may be entitled.

Jim Smith Pro Se

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Petition for Writ of Habeas Corpus was placed in the prison mailing system on 8-9-07
____ (month, date, year).

Executed (signed) on 8-9-07 (date).

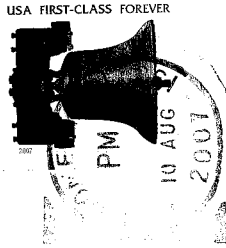
28 U.S.C. § 1796

Timothy Lee Smith

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing
this petition. _____

Timothy Lee Sunday #213453
 Easterling, L.S. FAC. D1-45A
 200 Wallace Drive
 Clon AL 36017-



Office of The clerk
 United States District Court
 P.O. Box 711
 Mont-Lomery, AL.
 36101-0711

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